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OFFICE OF THRIFT SUPERVISION  
DISSEMINATION BRANCH

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October 4, 2000

Manager  
Dissemination Branch  
Information Management and Services Division  
Attention: 1550-0023  
Office of Thrift Supervision  
1700 G Street, N.W.  
Washington, DC 20552

Re: Proposed Agency Information Collection Activities  
65 FR 48049 (August 4, 2000)

Dear Sir/Madam:

America's Community Bankers (ACB) welcomes the opportunity to comment on proposed changes to the Thrift Financial Report (TFR)<sup>1</sup> issued by the Office of Thrift Supervision (OTS). ACB represents the nation's community banks of all charter types and sizes. ACB members pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

### General

As a general matter, ACB supports the efforts of the federal banking agencies to develop more uniform reporting and we strongly support the elimination of the existing reporting requirements that are not warranted for safety and soundness. However, we are concerned about a number of the proposed changes and we note that the estimates of the time provided by the OTS to comply with the proposed changes suggest that even the OTS thinks that the time required is significant. The time estimates usually contained as part of these proposals are low in relation to the actual time spent by savings associations. Community banks frequently do not have the resources to devote the time that results in days of additional work to give additional information to the OTS.

A number of the changes proposed by the OTS would require modification of the data collection and maintenance systems used by savings associations. The OTS is proposing to add a number of additional reporting items in several areas including nontraditional lending, fiduciary activities, and holding company information. Further, the agency is proposing that a number of previously confidential items no longer be treated as confidential. The changes in this proposal would be effective for filing of the March 31, 2001 TFR.

<sup>1</sup> 65 Fed. Reg. 48049 (Aug. 4, 2000).

comply. Based on feedback from our members, ACB believes that a number of the changes in the proposal will require more time for savings associations to implement than provided in the proposal. Additionally, we do not believe that several items in the proposal should be issued in final form until additional clarifications have been made. Further, we are deeply concerned about the lack of confidentiality for some of the proposed additional items. Our specific concerns are described below.

### **Nontraditional Lending**

High Loan-to-Value Loans.<sup>2</sup> The OTS is proposing that data be collected on the balances, originations and purchases, sales charge-off and recovery data, and delinquency data on permanent mortgage loans secured by one- to four-family dwelling units with a loan to value between 90 percent and 100 percent inclusive and greater than 100 percent. While ACB understands the OTS's desire to promptly identify institutions that are involved with making high loan to value loans, we are concerned that the information would not be confidential. Several years ago, the OTS issued guidance on high loan-to-value lending, and savings associations are aware of the issues of concern to the agency. We request that the information be kept confidential for a minimum of one year.

Subprime Lending.<sup>3</sup> The OTS also has proposed the addition of a number of reporting items for specific activities in which savings associations are engaged. ACB opposes the addition of the proposed reportable items for subprime lending particularly since there is no agreed upon definition of subprime lending. Similar to the changes proposed by the federal banking agencies to the Call Report, the OTS has proposed that institutions involved in subprime lending will be required to report a number of items. The agency believes that the reporting of this information will make early detection of problems with and proper supervision of subprime loans easier. The OTS does not believe that the majority of savings associations will be required to report subprime loans. Depending on the definition adopted, we are not confident about this prediction.

The OTS acknowledges that the reporting of accurate information for these types of loans will depend on the development of a workable, understandable definition for subprime lending. The definition proposed by the OTS is substantially the same as the definition developed by the OTS and the other federal banking agencies for use in the Interagency Guidelines on Subprime Lending issued in March 1999. The OTS asks a series of questions with a goal of determining whether this general definition should include specific loan characteristics.

While ACB agrees that the definition of subprime lending is the most important element in this aspect of the proposal, we do not believe that the definition as proposed will clarify for many institutions whether they must report loans as subprime. The current definition is very subjective and is open to a number of interpretations by both bankers and regulators making it overly broad. In fact, it is conceivable that every institution will interpret it differently. The OTS asks questions about whether certain loan terms should trigger the subprime designation. One of the

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<sup>2</sup> Id. at 48050.

<sup>3</sup> Id.

questions is whether institutions should have to report individual loans or whether only those institutions that have a portfolio of subprime loans should be required to report. Many of the questions focus on loans or underwriting terms used by institutions that are involved in subprime lending.

ACB does not believe that the OTS should require the reporting of subprime loans using the definition in the proposal. Further, we believe that the industry and the federal banking agencies are far from having an objective definition. Without a clear definition, imposing a reporting requirement for the TFR for the first quarter of 2001 would be premature. Even if the OTS can develop a definition that is workable, savings associations would not have sufficient time to prepare for the additional reporting requirements. Systems and operations will have to be changed so that the information can be captured and staff will have to be trained.

The Interagency Guidelines on Subprime Lending give insured banks and savings associations a thorough review of what the agencies will look for in the supervisory and compliance process. The Guidelines also describe the fair lending aspect of the subprime lending. Further, the agencies have issued Interagency Fair Lending Examination Procedures and are in the process of developing additional guidance. While the proposal focuses on the safety and soundness aspects of subprime lending, the compliance area also is under scrutiny. We believe that the OTS has the tools needed to supervise and examine institutions that are involved in subprime lending without the additional TFR data.

We agree that it is important for the OTS and savings associations to know and understand the risks that are being taken with this type of lending. However, at a minimum, we request that the OTS and the other agencies include other factors in the process that they are undertaking to develop the definition.

First, lending that can be considered subprime is frequently done as part of a program developed to serve unmet credit needs in the community or as part of a community development initiative. The type of program in which underwriting standards are stretched and/or rates, fees and points are higher than for other loan programs serves a legitimate need in many communities, and we do not believe that the definitions and questions have taken into account this special use for subprime lending.

Additionally, ACB members frequently develop programs or originate individual loans that involve working with the borrower and that are on terms that are not granted to other borrowers. We believe that the reporting that is proposed by the OTS may stifle some of these programs. We request that the OTS use the tools that they already have to monitor and supervise these activities.

#### **Definition of Mortgage Loans<sup>4</sup>**

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<sup>4</sup> Id at 48052.

The OTS is proposing that the definition of mortgage loan be redefined for TFR reporting purposes. This change would make the TFR consistent with the Call Report by including in the definition of mortgage loan all loans secured by an interest in real estate. All loans satisfying this requirement would be reported as mortgages whether they are secured by first or junior liens and regardless of the department within the association or its subsidiary originating the loan. ACB suggests that the collection of the information required by this proposed change will require changes to the systems of savings associations and that a longer transition time will be necessary.

### **Board of Directors' IRR Limits<sup>5</sup>**

The OTS proposes that two lines be added to collect the association's interest rate risk limits set by its board of directors. The agency believes that this information will be useful for purposes of off-site monitoring. ACB believes that this information should remain confidential. Moreover, when boards of directors set limits without explanation, it is not obvious why the limits were set. In such cases, the information may be meaningless or may be misleading. Also, for those institutions that use sophisticated, internal interest rate risk models, the static rate shock measure would not provide the most useful supervisory information available. In cases where such internal models are deployed, institutions should not be required to report data that is not the best indication of true risk positions.

### **Holding Company Financial Information<sup>6</sup>**

The agency proposes adding a schedule to collect data on the holding companies of savings associations. The justification for the collection of the additional information is that it needed to assist in the off-site monitoring process and to more precisely scope on-site examinations. ACB believes that collecting this kind of detailed holding company information in the TFR is not appropriate. The TFR is the mechanism for gathering and reporting information about savings associations. There are other reports that provide information and data about the companies that own or control savings associations. There are market reports and if the company is publicly held, a number of documents are widely available. In addition, the OTS requires holding companies to submit annual and quarterly reports on H-(b)11. If the OTS determines that it needs additional information about the holding companies, we believe that there are other sources and that adding additional requirements to the TFR is not how the OTS should gather the information.

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<sup>5</sup> Id. at 48053.

<sup>6</sup> Id.

## **Federal Home Loan Bank Structured Advances and Other Structured Borrowings**

Another proposed addition to the TFR would change schedule CMR to collect estimates of the market value of structured borrowings to better evaluate the interest rate risk they pose. ACB strongly opposes this change. In the case of structured advances issued by a Federal Home Loan Bank (FHLBank), which we believe is the primary focus of the proposed schedule change, the member/purchaser of the advance receives information pursuant to a regulation issued by the Federal Housing Finance Board (FHFB) that delineates risk characteristics.<sup>7</sup> These instruments are not intended to be tradable or offset, and therefore do not have easily estimated market prices. We have been informed by FHLBank staff that it would be a significant undertaking for even the FHLBanks to estimate these values after the advances are made, much less the individual bank borrowers. Therefore, the proposed addition to the TRF would constitute an unreasonable regulatory burden.

ACB believes that it is important for the management of savings associations to have sufficient information to manage interest rate risk, and that management be competent to use this information in a manner to maintain safe and sound operations. The necessary risk information for putable advances is provided to borrowers under FHFB regulation. Rather than rely upon data collection that will be both unreliable and costly to regulated institutions, ACB strongly suggests that OTS seek to ensure safety and soundness by requiring appropriate risk management capabilities within the savings association through the supervisory process. Estimated market values of structured borrowing should not be added as an additional reported item on the TFR.

ACB appreciates the opportunity to comment on this important matter. If you have any questions, please contact the undersigned at (202) 857-3121.

Sincerely,

Charlotte M. Bahin  
Director of Regulatory Affairs  
Senior Regulatory Counsel

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<sup>7</sup> 12 CFR 950.6(d). Putable Advances requires that when a FHLBank offers a putable advance to a member, it must disclose in writing to such member the type and nature of the risks associated with putable advance pending. If the FHLBank terminates a putable advance prior to the stated maturity, the FHLBank must offer to provide replacement funding. Term to Maturity, Interest Rate and conversion requirements are to be disclosed.